

# **THE JACOBS REPORT**

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## **U.S. SUPREME COURT DECLARES MI WINE SALES BAN ILLEGAL**

In a 5-4 decision, the U.S. Supreme Court invalidated Michigan's ban on direct sales from out-of-state wineries. In its ruling, the court determined that the restrictions put on direct sales to consumers is anti-competitive because it treats instate and out-of-state wineries differently.

Rather than opening the door for interstate commerce, a strong effort is underway to ensure the ban stays in place by outlawing direct sales to consumers by all wineries, including those instate.

The decision is a temporary setback for wholesalers, but a total ban on internet sales would quickly restore their monopoly over what brands come into the state. Conversely, a ban on instate direct sales would hurt small Michigan wineries.

In the decision, Justice Anthony Kennedy wrote that the differential treatment afforded instate and out-of-state wineries "explicitly discriminates against interstate commerce." While the 21st Amendment (repealing Prohibition) gave states the right to regulate liquor, that regulatory power does not extend to the differential treatment of wineries that Michigan's law has allowed.

The states have never had the power to pass non-uniform laws that discriminate against out-of-state companies and products, Mr. Kennedy said.

Joining him in the majority decision were Justices Antonin Scalia, David Souter, Ruth Bader Ginsburg and Stephen Breyer.

"[Michigan's] discriminatory character is obvious," added Justice Kennedy. "The increasing winery-to-wholesaler ratio means that many small wineries do not produce enough wine or have sufficient consumer demand for their wine to make it economical for wholesalers to carry their products. ... This has led many small wineries to rely on direct shipping to reach new markets," Mr. Kennedy said.

In defending the laws, attorneys representing the State of Michigan argued it was necessary to limit access to direct sales of wine, especially via the Internet, in order to protect minors.

Justice Kennedy rejected that argument, saying there was little evidence underage drinkers were ordering wine. Data has demonstrated that teenagers and other underage drinkers prefer beer, wine coolers and hard liquor. And in the 26 states that do allow direct importation of wine, there has been scant evidence of minors have used the system to break the law.

Michigan's "Three Tier System" of alcohol is one of the most rigorous regulatory systems in the nation.

"Our number one concern is to make sure minors do not have access to alcohol," said Michigan Liquor Control Commissioner Nida Samona, who prefers that all sales be conducted face to face.

### **STUDY: MI BUSINESS TAXES BELOW AVERAGE**

A study by the Council on State Taxation paints Michigan below the national average on the percentage of business taxes to total taxes.

According to the release, Michigan does better than some of its competitor states in terms of business taxes to the individual state's total tax picture.

The study, which was issued last month by the national group, was brought into focus by Governor Jennifer Granholm's Single Business Tax proposal.

The two were not connected.

According to the study, business taxes average 43 percent of all state and local taxes in the 50 states, according to the study. The percentages range from a high of 73.2 percent in Wyoming to 33.7 percent in Maryland.

The average in Michigan is 39.4 percent. Michigan's percentage is slightly above Minnesota's, at 39.3 percent, and above Wisconsin at 37.7 percent.

But Michigan's average is below Ohio at 40 percent, Indiana at 42 percent and Illinois at 44.9 percent. And the state fares far better in terms of percentage compared to states without personal income tax such as Florida, at 46.4 percent, and Texas, at 60.2 percent.

The biggest tax businesses pay overall is property taxes, and that is true of the \$14 billion in taxes in business in Michigan in 2004, with \$6.2 billion in property taxes paid.

The study also found that business taxes were the fastest growing part of state and local revenues, with the national average showing that 52 percent of all revenue growth came from business taxes. Michigan was again slightly under the average, with 51 percent of the average growth coming from business taxes, and in that case did worse than both Indiana and Illinois, with 32 percent and 49 percent of revenue growth coming from business taxes, but better than Minnesota, Ohio and Wisconsin, at 56 percent, 57 percent and 78 percent respectively.

### **A CALL FOR IMPARTIAL REDISTRICTING**

Under a proposal offered by Rep. Glenn Anderson (D-Westland), a bipartisan commission would draw borders for Michigan's state legislative and U.S. House districts. The idea is to remove partisanship from the re-mapping process.

Currently, the legislature and governor are charged with writing new maps for the House, Senate, Court of Appeals and U.S. House districts following each Census. If the Legislature and governor cannot agree on a plan, then the courts draw maps.

Map writing can have devastating political effects. In the 1970s, a court-drawn plan catapulted Democrats to lopsided majorities in the House and Senate.

The most recent plan, drawn by Republicans in 2001, is considered nationally one of the most effective Republican maps for a state's U.S. House seats. What was a 9-7 Democratic majority in the delegation became 9-6 GOP (the state lost one seat because of national population trends) by pitting Democratic incumbents against each other in three districts. This majority has held for Republican despite more voters voting Democratic every year.

The map written by Republicans for the Legislature also was viewed as strengthening the GOP position in the Legislature although Republicans actually have one fewer seat in the Senate and the same number of seats in the House as they did before the new plan took effect beginning with the 2002 elections.

Critics of the current process say the majority party protects its turf and makes it nearly impossible for the minority party to take control. Iowa is the lone state with a commission-driven process where its equivalent of the Legislative Service Bureau writes the maps. Discussions have been strong in California about changing the way that state's maps are written.

"Because of gerrymandering, voters no longer pick their elected officials," Rep. Anderson said in a statement. "Elected officials now pick their voters, and this has corroded our political system."

As a constitutional amendment, the proposal would require two-thirds majorities in the House and Senate to be put before voters, who also would have to give their approval.

But Republicans, who control the Legislature, voiced no enthusiasm towards the plan.

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All Michigan legislation can be tracked at <http://www.legislature.michigan.gov/>.

State Senator Gilda Jacobs represents the 14<sup>th</sup> Senate District, which includes Beverly Hills, Bingham Farms, Farmington, Farmington Hills, Ferndale, Franklin, Hazel Park, Huntington Woods, Lathrup Village, Oak Park, Pleasant Ridge, Royal Oak Township, Southfield, and Southfield Township. She is the Minority Vice Chair of the Families & Human Services Committee and the Economic Development, Small Business & Regulatory Reform Committee. She also serves on the Government Operations and Health Policy Committees.

**Constituents of the 14<sup>th</sup> District may contact Senator Jacobs at [sengjacobs@senate.michigan.gov](mailto:sengjacobs@senate.michigan.gov) or toll-free at 1-888-937-4453.**

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